

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**WARREN THOMAS JOSEPH**

**PLAINTIFF**

**VERSUS**

**CIVIL ACTION NO. 1:11cv180HSO-JMR**

**MICHAEL ASTRUE**

**DEFENDANT**

**ORDER ADOPTING REPORT AND RECOMMENDATION**

This cause comes before the Court on the Report and Recommendations [7] of Chief Magistrate Judge John M. Roper entered in this cause on March 1, 2012. The record reveals that on or about December 19, 2011, the Magistrate Judge issued an Order [5] directing Plaintiff to show cause in writing why this matter should not be dismissed for failure to prosecute and for failure to comply with the Court's June 20, 2011, Order, which cautioned Plaintiff that failure to properly serve Defendant may result in dismissal of this case. Plaintiff was warned in the Court's December 19, 2011, show cause Order [5] that failure to respond to the Order [5] and/or properly serve Defendants may result in dismissal of this lawsuit.

Because Plaintiff has failed to comply with the Court's December 19, 2011, Order [5], or otherwise communicate with the Court, the Magistrate found that Plaintiff had demonstrated a lack of interest in pursuing his claims. Rep. and Rec. at p. 2. The Magistrate recommended dismissal of this case pursuant to Federal Rule of Civil Procedure 41(b), and pursuant to the Court's inherent authority to dismiss an action *sua sponte*. *Id.* A copy of the Report and Recommendation was received by Plaintiff on March 6, 2012. Acknowledgment [8]. Plaintiff has not

served any objection to the Report and Recommendation.

Plaintiff filed his Complaint [1] on April 20, 2011, against the Commissioner of Social Security. Pursuant to Federal Rule of Civil Procedure 4(c), Plaintiff was responsible for serving summons upon Defendant within the time limitations imposed by Rule 4(m). Rule 4(m) states in pertinent part that

[i]f a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

FED. R. CIV. P. 4(m).

To date, no summons have issued, nor has Plaintiff served summons upon Defendant. Plaintiff has not responded to the Magistrate Judge's December 19, 2011, Order [5], or to his Report and Recommendations. Where a party fails to file specific objections to a magistrate judge's report and recommendation, the district court reviews the report and recommendation for findings and conclusions that are clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1); *see also United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Based on the record before this Court, the undersigned finds that the Magistrate Judge's findings were not clearly erroneous, nor were his conclusions contrary to law. After referral of hearing by this Court, and the Court, having fully reviewed the Report and Recommendations [7], the relevant law, and the record in this matter, and being fully advised in the premises, finds that the Report and Recommendations [7] of Chief Magistrate Judge John M. Roper, should be adopted

as the opinion of this Court.

**IT IS, THEREFORE, ORDERED AND ADJUDGED** that, the Report and Recommendations [7] of the Magistrate entered on March 1, 2012, is adopted as the finding of this Court, and the Complaint is hereby dismissed without prejudice pursuant to FED. R. CIV. P. 4(m) and 41(b). A separate judgment will be entered herein in accordance with this Order as required by Rule 58 of the Federal Rules of Civil Procedure.

**SO ORDERED AND ADJUDGED**, this the 21<sup>st</sup> day of March, 2012.

*s/ Halil Suleyman Ozerden*

HALIL SULEYMAN OZERDEN  
UNITED STATES DISTRICT JUDGE